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C O N F I D E N T I A L SECTION 01 OF 02 SEOUL 000357

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TAGS: FAIR KS KN

SUBJECT: ROKG PLANS TO RAISE DPRK CIV AIR ISSUE IN ICAO

Classified By: POL M/C Joseph Y. Yun. Reasons 1.4(b/d)

¶1. (C) SUMMARY: Ministry of Foreign Affairs Director General for North American Affairs Chang Ho-jin told Pol M/C on March 6 that the ROKG regarded the DPRK's March 5 statement about not being able to guarantee the safety of ROK civilian aircraft in North Korean air space as a "threat to the safety of civil aviation," and said that the ROKG will raise the issue with the International Civil Aviation Organization (ICAO), possibly as soon as this weekend. He expressed appreciation for the Department Spokesman's March 5 statement rejecting the DPRK threat and requested coordination with the USG. END SUMMARY.

¶2. (U) Pol M/C met DG Chang Ho-jin to discuss the ROKG reaction to the DPRK's March 5 statement that appeared to threaten ROK airline traffic that passes through DPRK airspace based on a 1997 Memorandum of Understanding brokered by the ICAO. The March 5 statement said, in part: "(The DPRK is) compelled to declare that security cannot be guaranteed for south (sic) Korean civil airplanes flying through the territorial air of our side and its vicinity above the East Sea of Korea, in particular, while the (joint U.S.-ROK) military exercises are underway.") Note that the joint Key Resolve and Foal Eagle military exercises will include military maneuvers from March 9-13 and March 16-19.

¶3. (C) DG Chang Ho-jin said that the ROKG strongly rejected the "threat to the safety of civil aviation," appreciated USG rejection of it as well, and would raise the issue with the ICAO Council as soon as this weekend. He said the ROKG felt compelled to respond publicly, noting that a Ministry of Unification spokesman had called that statement a violation of international law earlier on March 6.

¶3. (C) To protect air passengers, the ROKG had asked to ROK carriers to avoid North Korean air space voluntarily starting on March 6, and air carriers would be required to avoid the area starting on March 8.

¶4. (C) Noting that the ROKG had held interagency meetings about the statement, he said the ROKG evaluated it mainly as an effort to protest the joint exercises, but also as a continuation of ongoing protests against Seoul's North Korea policy. On a positive note, he called attention to the fact that the threat's duration was limited to the duration of the exercise, rather than indefinite. He did not see the statement as related to a possible missile launch. Chang added that the North might show additional hostility during the joint exercises, recalling that the DPRK shot 300 rounds of artillery into the sea during last year's exercises.

¶5. (C) Chang said North Korea's statement was a violation of

its obligations as a signatory to the ICAO on two counts: restrictions on civilian air travel could only be imposed on a non-discriminatory basis (not just against ROK civ air) and only for the added protection of passengers. The ROKG would raise the issue with the ICAO Council as soon as this weekend, possibly requesting that the Chairman of the ICAO send a letter to the DPRK.

¶6. (C) Chang said that the ROKG appreciated the State Department Spokesman's March 5 rejection of the DPRK statement and requested further coordination on this issue.

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MOFAT Legal Affairs' Perspective  
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¶7. (C) In a separate discussion earlier in the day before the ROKG had reached its policy decision, working-level MOFAT International Legal Affairs Division (office responsible for ICAO) officers confided to Econoff that they were not absolutely certain that North Korea's statement would be considered to violate the ICAO convention. Specifically, MOFAT was looking at Annex 11 regarding air traffic services.

It said that ICAO obligated the DPRK to provide "flight information services" for the Pyongyang "Flight Information Region." DPRK's statement could be interpreted as providing information, but the information was that the safety of ROK-flag flights could not be guaranteed. While it appeared like a threat to South Korea, the DPRK statement was vague and could be characterized by the DPRK as meeting its "flight information service" obligation. The MOFAT official noted

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that at the end of the day it would be a political decision regarding what type of action would be taken with respect to ICAO and the DPRK.

¶8. (C) On the afternoon of March 6, Korea's Civil Aviation and Safety Authority (KCASA) met with the Air Operation Committee (AOC), which includes both domestic and foreign carriers. AOC members were informed verbally regarding KCASA's concerns regarding the DPRK statement. KCASA was expected to issue a statement on the evening of March 6 on the Ministry of Land, Transportation and Maritime (MLTM) website that will state effective at midnight on March 8, 2008 (one day before the joint US-Korea military exercises are scheduled to commence), Korean flag air carriers (Korean Air and Asiana) will be required to detour the Kamchatka (B467) route in DPRK's airspace to the North Pacific air route over Japanese airspace. Until then, Korean air carriers will be allowed to decide if they wish to use the Kamchatka route. As of COB Friday, MLTM had not posted its advisory on its website.

¶9. (SBU) Currently, per MLTM, 29 international flights use the "Kamchatka route" in question through DPRK airspace daily -- 16 Korean and 13 international, of which seven are U.S. flag flights (UPS, Delta and possibly FedEx). UPS and Delta told Post they will re-route their flights around the Kamchatka air space; we have been unable to connect with FedEx. Post has also been in touch with United, Northwest, and Polar, which do not use that route but tell us they are likely to move their existing flights from the ROK further away from DPRK airspace.

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Media reaction  
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¶10. (U) Military sources cited by the media indicated no signs of "unusual activity" along the border. Other unspecified media sources speculated the warning could be a sign that Pyongyang is trying to clear its airspace before testing a ballistic missile. In a Yonhap interview, Dr. Baek Seung-joo of the Korea Institute for Defense Analyses (KIDA) countered that it was more likely the North was engaging in mind games as a launch could threaten all flights from around

the world passing through its airspace, not just South Korean ones. North Korea specialist Andrei Lankov, meanwhile, said the warning was probably the latest ploy designed to attract U.S. attention.

STEPHENS